

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DCK/TTEC, LLC,	)	
	)	
Plaintiff,	)	Civil Action No. 14-1739
	)	
v.	)	Judge Cathy Bissoon
	)	
MICHAEL W. POSTEL, SR., POSTEL	)	
INDUSTRIES, INC., <i>a Texas corporation,</i>	)	
POSTEL HOLDINGS, LLC,	)	
<i>a Texas limited liability company,</i>	)	
POSTEL BUILDING SYSTEMS, LLC, <i>a Texas</i>	)	
<i>limited liability company,</i>	)	
POSTEL ERECTION GROUP, L.L.C., <i>a Nevada</i>	)	
<i>limited liability company,</i>	)	
POSTEL INTERNATIONAL, L.L.C., <i>a Louisiana</i>	)	
<i>limited liability company,</i>	)	
POSTEL INTERNATIONAL, INC., <i>a Nevada</i>	)	
<i>corporation,</i>	)	
POSTEL-WEST, INC., <i>an Arizona corporation,</i>	)	
POLK COUNTY EQUIPMENT, INC., <i>a Texas corporation,</i>	)	
AMERISTEEL INTERNATIONAL, INC.,	)	
<i>a Texas corporation,</i>	)	
AMERISTEEL MANUFACTURING, INC., <i>a Texas</i>	)	
<i>Corporation,</i>	)	
POSTEL HOLDINGS II, L.L.C., <i>a Texas limited liability company,</i>	)	
POSTEL-MCALLEN, L.L.C., <i>a Texas</i>	)	
<i>limited liability company,</i>	)	
POSTEL HOLDINGS III, L.L.C., <i>a Texas limited</i>	)	
<i>liability company,</i>	)	
ADAMS STREET HOLDINGS, L.L.C., <i>a Texas limited</i>	)	
<i>liability company,</i>	)	
POSTEL ADAMS, L.L.C., <i>a Texas limited liability company,</i>	)	
POSTEL-RB MANAGEMENT, L.L.C.,	)	
<i>a Texas limited liability company,</i>	)	
POSTEL GROUP, INC., <i>an Anguilla</i>	)	
<i>Corporation,</i>	)	
POSTEL STEEL VENTURES, L.L.C., <i>a Texas limited</i>	)	
<i>liability company,</i>	)	
INNERSTAFF, INC., <i>a Texas corporation,</i>	)	
POSTEL HOLDINGS, IV, L.L.C., <i>a Texas limited liability</i>	)	
<i>company,</i>	)	
and DOES 1 THROUGH 10,	)	
	)	
Defendants.	)	

## **MEMORANDUM ORDER**

For the reasons that follow, Defendants' Final Motion for Summary Judgment (**Doc. 55**) will be denied.

### **I. MEMORANDUM**

The Court incorporates the background as stated in its May 14, 2015 Order on Defendants' Motion to Dismiss. On May 14, 2015, the Court denied Defendants' Motion to Dismiss. (Doc. 40). On June 4, 2015, Defendants again moved to dismiss Plaintiff's Complaint. (Doc. 44). On June 5, 2015, the Court denied Defendants' second Motion to Dismiss. (Doc. 45). After a Case Management Conference, the Court issued a Case Management Order (Doc. 53) setting deadlines in the instant case. Initial disclosures under Rule 26(a)(1) were to be exchanged approximately one month ago, and fact discovery shall be completed by November 25, 2015.

Defendants filed a Final Motion for Summary Judgment on July 16, 2015. Defs.' Mot. (Doc. 55). Defendants move for summary judgment on the following theories: 1) at all times during any transfer or sale of assets as alleged, said assets were encumbered by a valid preexisting lien, and were transferred or sold for equivalent value, and thus did not constitute fraudulent transfers; 2) the evidence does not establish that Defendant Industries committed fraud against Plaintiff – an essential element of alter ego claims under Texas law<sup>1</sup> – and thus Plaintiff's alter ego theory fails; and 3) Texas law does not recognize successor liability claims except in instances of alleged product liability.

It is well-settled that “the summary judgment process presupposes the existence of an adequate record.” Doe v. Abington Friends Sch., 480 F.3d 252, 257 (citations omitted).

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<sup>1</sup> The Court renders no immediate opinion on Defendants' position on the applicability of Texas law here in the Western District of Pennsylvania.

Defendants' Motion for Summary Judgment is premature in light of the need to conduct adequate discovery. The Motion will be denied without prejudice, and Defendants may raise any relevant issues after the close of discovery. The Court will set the schedule for the filing of summary judgment motions at the conference to be held on January 5, 2016.

## **II. ORDER**

For the reasons stated above, Defendants' Final Motion for Summary Judgment (**Doc. 55**) is **DENIED** without prejudice.

IT IS SO ORDERED.

July 21, 2015

s/Cathy Bissoon  
Cathy Bissoon  
United States District Judge

cc (via ECF email notification):

All Counsel of Record